

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

United States of America,

Plaintiff

v.

Etuale Uiagalelei,

Defendant

Case No.: 2:13-cr-436-JAD-PAL

**Order Adopting Report and
Recommendation [#29], Overruling
Objections [#32], and Denying Motion to
Suppress [#22]**

Defendant Etuale Uiagalelei is charged in an indictment with one count of being a felon in possession of a firearm after he purportedly admitted that the .38 caliber revolver discovered in the vehicle in which he was a passenger was his.¹ Law enforcement received a tip that the car in which Uiagalelei was riding contained a felon and a firearm. Officers stopped the car, purportedly for a traffic violation, arrested the driver on an outstanding warrant, and removed the passengers. When an inventory search of the vehicle revealed the gun, officers applied for, and obtained, a telephonic search warrant with which they procured the gun and a DNA sample from Uiagalelei. After being Mirandized, Uiagalelei admitted the gun was his.

Uiagalelei moves to suppress the gun, DNA evidence, and his post-arrest statements, arguing that they are the fruits of an unlawful traffic stop and arrest.² The motion was referred to Magistrate Judge Peggy Leen. After conducting an evidentiary hearing and considering the testimony of two officers on the scene and one of the other passengers in the vehicle that night, Magistrate Judge Leen issued an extensive, 19-page report of findings and

¹ Doc. 1 at 1–2.

² Doc. 22.

1 conclusions. She found that “the officers had reasonable suspicion to conduct” the traffic
 2 stop; it was “objectively reasonable” for the officers to remove Uiagalelei from the vehicle
 3 and detain him pending investigation into the allegations made in the phone tip; and, during
 4 that detention, officers “developed probable cause to arrest him.”³ He “received and waived
 5 *Miranda* warnings before making” the incriminating admissions about the gun, and his
 6 “Fourth Amendment rights were not violated under the totality of the circumstances
 7 surrounding his initial detention, the discovery of the firearm in the trunk of the vehicle, his
 8 onsite questioning or subsequent arrest.”⁴ Judge Leen recommends denial of the motion to
 9 suppress.⁵ Uiagalelei timely objects.⁶

10 Having carefully reviewed the record, the parties’ respective submissions, and the
 11 relevant law, I adopt Magistrate Judge Leen’s findings and conclusions, accept her
 12 recommendation, overrule the defendant’s objections, and deny the motion to suppress.

13 Discussion

14 Uiagalelei raises two objections to the report and recommendation, neither of which
 15 carries the day. Uiagalelei argues again that the car in which he was riding was stopped
 16 illegally and on pretext, and the evidence that flowed from that stop must be suppressed as
 17 “fruits of the poisonous tree.”⁷ He notes that the officers in the marked patrol car, who
 18 performed the stop, did not personally see the traffic violation for which the vehicle was
 19 pulled over.⁸ Instead, they stopped the car when Officer O’Conner and his partner requested
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 22 ³ Doc. 29 at 18.

23 ⁴ *Id.* at 19.

24 ⁵ *Id.*

25 ⁶ Doc. 32.

26 ⁷ *Id.* at 3.

27 ⁸ *Id.* at 2–3.

1 the stop.⁹ But as Uiagalelei himself acknowledges, a pretextual stop is constitutional if
 2 police have “the reasonable suspicion necessary to support a stop.”¹⁰ Uiagalelei does not
 3 contend that the driver of the vehicle did not commit the traffic violation on which the stop
 4 was made. Indeed, I agree with Magistrate Judge Leen’s finding that the stop was supported
 5 by reasonable suspicion because the driver violated Nevada traffic law and because police
 6 saw him do so.¹¹ Uiagalelei offers no legal authority for the proposition that police officers
 7 cannot rely on the real-time observations and representations of their fellow officers and that
 8 officers must personally witness the traffic violation that supports the stop. I therefore find
 9 no basis to grant the motion to suppress based on this argument and overrule this objection.

10 Second, Uiagalelei argues that Magistrate Judge Leen’s recommendation “seems to
 11 stem more from an evaluation of the time [period in which Uiagalelei and others waited
 12 outside the Honda], and Mr. Uiagalelei’s standing in relation to the car, than it does to the
 13 applicable law.”¹² He argues that “[t]his is an impermissible stop.”¹³ This characterization
 14 is not supported by the R&R. Although it does contain a discussion of the duration of the
 15 traffic stop and de facto arrest, it also separately addresses the traffic stop itself.¹⁴ Like Judge
 16 Leen, I find that police had reasonable suspicion for the subject traffic stop because the
 17 driver violated at least one Nevada law: he failed to turn into the correct lane as he drove
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20 ⁹ *Id.* at 2.

21 ¹⁰ *See id.* at 2 (citing *Whren v. United States*, 517 U.S. 806, 809–10 (1996)); *see also United*
 22 *States v. Millan*, 36 F.3d 886, 888 (9th Cir. 1994) (quoting *United States v. Cannon*, 29 F.3d 472, 474
 23 (9th Cir. 1994) (internal quotation marks omitted) (“The pretextual stop doctrine is not meant to inhibit
 the use of evidence discovered serendipitously during legitimate traffic stops.”).

24 ¹¹ Doc. 29 at 15.

25 ¹² Doc. 32 at 3.

26 ¹³ *Id.*

27 ¹⁴ Doc. 29 at 12–15.

1 through an intersection, and instead, illegally changed lanes in the intersection.¹⁵ This is a
2 constitutional stop based on reasonable suspicion, and no suppression of evidence is
3 warranted.

4 **Conclusion**

5 Accordingly, it is hereby ORDERED that Magistrate Judge Peggy Leen's report and
6 recommendation **[Doc. 29] is ADOPTED**; Etuale Uiagalelei's motion to suppress evidence
7 for Fourth Amendment violations **[Doc. 22] is DENIED**; and his Objections to the R&R
8 **[Doc. 32] are OVERRULED**.

9 DATED November 13, 2014.

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Jennifer A. Dorsey
United States District Judge

24 ¹⁵ See *id.* at 14–15 (discussing NRS 484B.223 and NRS 484B.400). I note that Officer O'Conner
25 testified to the failure to signal and the illegal lane change during the motion hearing, but the arrest
26 report and the search-warrant application only discuss an illegal lane change. Compare Doc. 22-2 at
27 3 (arrest report) and Doc. 22-6 at 3–4 (transcript of application for telephonic search warrant) with Doc.
28 29 at 6 (describing Officer O'Conner's testimony). Whether the driver committed one or both traffic
violations, I find it sufficient that the record consistently describes an illegal lane change that gave
police reasonable suspicion for the traffic stop.